

Jul 01, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DOUGLAS ARBOGAST,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No. 4:19-cv-05067-SMJ

**ORDER SUMMARILY
DISMISSING HABEAS CORPUS
PETITION**

Petitioner Douglas Arbogast, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, ECF No. 1. The \$5.00 filing fee has been paid.

PROPER RESPONDENT

An initial defect with the petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81

1 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal
2 courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

3 **EXHAUSTION REQUIREMENT**

4 Petitioner challenges his 2018 Benton County jury convictions for attempted
5 rape of a child in the first degree and attempted rape of a child in the second degree.
6 He received a sentence of ninety months' confinement. Petitioner indicates that he
7 has a direct appeal pending. ECF No. 1 at 2.

8 In his grounds for relief, Petitioner argues that the State of Washington has
9 no jurisdiction to decide federal constitutional matters. *Id.* at 5–12. It has long been
10 settled that state courts are competent to decide questions arising under the U.S.
11 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the
12 state court, as much as it is that of the federal courts, when the question of the
13 validity of a state statute is necessarily involved, as being in alleged violation of any
14 provision of the federal constitution, to decide that question, and to hold the law
15 void if it violate that instrument.”); *see also Worldwide Church of God v. McNair*,
16 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as
17 federal courts to decide federal constitutional matters). Therefore, Petitioner’s
18 arguments to the contrary lack merit.

19 Additionally, before a federal court may grant habeas corpus relief to a state
20 prisoner, the prisoner must exhaust the state court remedies available to him or her.

1 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
2 requires that a prisoner give the state courts an opportunity to act on his or her claims
3 before he or she presents those claims to a federal court. *O’Sullivan v. Boerckel*,
4 526 U.S. 838 (1999). A petitioner has not exhausted a claim for relief so long as he
5 or she has a right under state law to raise the claim by an available procedure. *See*
6 *id.*; 28 U.S.C. § 2254(c).

7 To meet the exhaustion requirement, the petitioner must have “fairly
8 present[ed] his claim in each appropriate state court (including a state supreme court
9 with powers of discretionary review), thereby alerting that court to the federal
10 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.
11 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by
12 describing the factual or legal bases for that claim and by alerting the state court “to
13 the fact that the . . . [petitioner is] asserting claims under the United States
14 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d
15 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in a state
16 court and a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513
17 U.S. at 365–66.

18 Furthermore, to fairly present a claim, the petitioner “must give the state
19 courts one full opportunity to resolve any constitutional issues by invoking one
20 complete round of the State’s established appellate review process.” *O’Sullivan*,

1 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
2 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
3 (1971). It appears from the face of the petition, the attached documents, and the
4 supplement received on June 5, 2019, that Petitioner has not exhausted his state
5 court remedies as to each of his grounds for relief. Indeed, Petitioner affirmatively
6 represents that he did not exhaust his state court remedies.

7 **GROUND FOR FEDERAL HABEAS CORPUS RELIEF**

8 Petitioner asserts that the Washington State Constitution contradicts the U.S.
9 Constitution regarding the Fifth Amendment right to “presentment or indictment of
10 a Grand Jury.” ECF No. 1. He claims “no bill of indictment” was brought against
11 him, rendering his arrest, conviction, and imprisonment illegal. *Id.*

12 Petitioner seems to argue that because the state courts have defied “federally
13 established procedures and processes for the adjudication of crimes,” only “a court
14 of federal jurisdiction” has jurisdictional authority over his claims. *Id.* His bald
15 assertion that “due process of the law was ignored” is unsupported by his factual
16 allegations. *Id.*


17 As the U.S. Supreme Court stated long ago, “Prosecution by information
18 instead of by indictment is provided for by the laws of Washington. This is not a
19 violation of the Federal Constitution.” *See Gaines v. Washington*, 277 U.S. 81, 86
20 (1928). Consequently, Petitioner’s assertions to the contrary presented in his four

1 grounds for federal habeas corpus relief are legally frivolous.

2 Because it plainly appears from the petition and accompanying documents
3 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** that the
4 petition, ECF No. 1, is **DISMISSED** pursuant to Rule 4 of the Rules Governing
5 Section 2254 Cases in the United States District Courts. All pending motions are
6 **DENIED AS MOOT**.

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
8 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
9 that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
10 taken in good faith and there is no basis upon which to issue a certificate of
11 appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
12 appealability is therefore **DENIED**.

13 **DATED** this 1st day of July 2019.

14 
15 SALVADOR MENDEZ, JR.
United States District Judge